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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Assessment and Collection )  
of Regulatory Fees for )  
Fiscal Year 1995 )

MD Docket No. 95-3

**GTE'S COMMENTS**

GTE Service Corporation on behalf of  
its affiliated domestic telephone,  
equipment and service companies

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**GTE'S COMMENTS**

GTE Service Corporation ("GTE") on behalf of its affiliated domestic telephone, equipment and service companies, hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("Notice" or "NPRM") in the above-captioned proceeding.<sup>1</sup>

**I. BACKGROUND**

On August 10, 1993, as part of the Omnibus Budget Reconciliation Act of 1993, Congress added Section 9 to the Communications Act.<sup>2</sup> This section authorizes the Commission to assess and collect regulatory fees to recover the costs incurred in carrying out enforcement activities, policy and rulemaking activities, user information services, and international activities. Pursuant to that authority, on June 3, 1994, the Commission adopted a regulatory fee schedule

<sup>1</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 1995, *Notice of Proposed Rulemaking*, MD Docket No. 95-3, FCC 95-14 (released January 12, 1995).

<sup>2</sup> Pub. L. No. 103-66, Title VI, § 6003(a), 107 Stat. 397 (August 10, 1993). New section 9 of the Communications Act is codified at 47 U.S.C. § 159.

and rules for fiscal year 1994.<sup>3</sup> There, the Commission adopted without modification the Schedule of Regulatory Fees enacted by Congress in section 9(g) of the Amended Act.<sup>4</sup>

In the instant NPRM, the Commission proposes a regulatory fee schedule and prescribes rules to govern the payment of regulatory fees for the fiscal year 1995. The Commission states that the fee schedule proposed is designed to "recover \$116,400,000 in costs, consistent with the amount that Congress has appropriated for [its] enforcement, policy and rulemaking, and international activities and user information services for FY 1995."<sup>5</sup> In addition, the NPRM proposes to expand the schedule of fees to include carriers not previously required to pay regulatory fees, and to establish procedural rules for the payment of fees.

## II. DISCUSSION

GTE believes that some parts of the Commission's proposed regulatory fee schedule and rules must be clarified or amended in order to ensure a fair and equitable assessment of the regulatory fee burden. In particular, GTE asks the Commission to: (1) clarify whether, with respect to footnotes 9 and 17 of the NPRM, existing carriers classified as commercial mobile radio services

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<sup>3</sup> Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for The 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333 (1994) ("*1994 Fee Order*").

<sup>4</sup> *Id.* at 5339.

<sup>5</sup> *NPRM* at 3.

("CMRS") providers are obligated to pay regulatory fees; (2) clarify that entities should not be required to pay more than one regulatory fee amount for each service provided; and (3) exclude resellers from directly having to pay regulatory fees.

A. The Commission Should Clarify Whether Existing Carriers Classified as CMRS Providers Must Pay Regulatory Fees

In the NPRM, the Commission has elected to retain the regulatory fee categories from the 1994 fee schedule rather than amend them to align the categories with the Commission's new organizational structure.<sup>6</sup> Thus, rather than creating a regulatory fee category for all CMRS, the 1995 regulatory fee schedule assesses fees for carriers newly re-classified as CMRS or transitioning to CMRS based on their previous classification. Accordingly, it appears that the Commission intends for cellular and paging carriers, which have been classified by the Commission as CMRS,<sup>7</sup> to continue to pay regulatory fees under the Public Mobile/Cellular Radio Services category, and specialized mobile radio services, some of which are being transitioned to CMRS status,<sup>8</sup> to continue to pay fees under the Land Mobile Services category.

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<sup>6</sup> *Id.* at 8.

<sup>7</sup> Implementation of Section 3(n) of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1448-1463 (1994) (hereinafter "*CMRS Order*").

<sup>8</sup> *Id.* at 1448-1463, and 1512-1514.

Footnotes 9 and 17 of the NPRM, however, state that the Commission has not proposed regulatory fees for the commercial mobile radio service ("CMRS").<sup>9</sup> While likely intended only to reflect that no separate CMRS regulatory fee category has been created and that no new CMRS providers are required to pay regulatory fees, these footnotes can be interpreted to require that carriers currently operating and classified as CMRS, or transitioning to CMRS status, are not obligated to pay regulatory fees. GTE asks the Commission to clarify the language in footnotes 9 and 17 to correct this inconsistency. In particular the Commission should ensure that if any existing CMRS provider must pay regulatory fees, then all CMRS providers should face a similar regulatory fee burden.

B. The Commission Should Clarify that Entities Should Not be Required to Pay More than One Regulatory Fee Amount for Each Service Provided

In the NPRM, the Commission proposes to broaden its fee categories in order to ensure that all services subject to FCC regulation bear the costs of that regulation. Thus, under the common carrier heading, the Commission has added regulatory fee categories for "Operator Service Provider/Pay Telephone Operator," "Resellers," and "Other Interstate Providers."<sup>10</sup> By adding these new categories, however, the Commission has created a situation where a service provided by an entity that falls within one category may also meet the definition of one or more other categories.

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<sup>9</sup> NPRM at 7-8, n.9, and at 22, n.17.

<sup>10</sup> *Id.* at Appendix B.

For example, under the proposed fee schedule, GTE Airfone would pay regulatory fees as an air-ground service provider under the Public Mobile/Cellular Radio Services category.<sup>11</sup> GTE Airfone's service, however, could also meet the Commission's proposed definitions of a provider of operator services, interstate service, and international MTS service. GTE is concerned that such entities not be required to pay regulatory fees under multiple fee categories for the same service.<sup>12</sup>

To alleviate this problem, GTE requests that the Commission clarify that an entity is only required to pay one regulatory fee amount for each service it provides. The fee assessed on such providers should be the fee category encompassing the principal service provided by the entity.

C. Resellers Should Not Be Required to Pay Regulatory Fees

In the NPRM, the Commission proposes to require resellers to pay regulatory fees. The Commission reasons that these carriers benefit from FCC regulation of the interstate network and should therefore be subject to a regulatory fee payment.<sup>13</sup> While GTE does not quarrel with the Commission's logic in finding that resellers should pay regulatory fees, GTE nonetheless does not believe it is appropriate to impose a direct regulatory fee on resellers. GTE

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<sup>11</sup> *Id.* at 21.

<sup>12</sup> GTE's comments in this regard are not directed at the case where an entity provides more than one service and must pay separate regulatory fee amounts for each service -- for example, when an entity provides both special and switched access services and must pay regulatory fees based on each.

<sup>13</sup> *NPRM* at 26-27.

believes that resellers should not have to pay regulatory fees directly, because it is impossible to determine the number of presubscribed lines -- the customer unit for interexchange carriers -- for resale carriers, and because resellers may already be paying regulatory fees under another regulatory fee category.

As the Commission noted in the NPRM, this issue was the subject of several comments in the proceeding considering regulatory fees for fiscal year 1994. In that proceeding, GTE argued that:

Resellers [ ] do not purchase dedicated facilities when they purchase service from a facilities-based carrier. Rather, the lines over which a reseller's traffic is carried are typically shared facilities. Thus, it would be impossible for a reseller to determine a number of presubscribed lines on which to base regulatory fees. Any attempt to require resellers to pay fees based on the number of presubscribed lines would result in double counting of the facilities over which reseller traffic is provided.<sup>14</sup>

GTE argued, further, that requiring resellers to pay regulatory fees could result in a service provider being assessed two regulatory fees for providing one service. GTE noted that, in some circumstances, some cellular carriers are considered resellers of interexchange services by the Commission. Cellular carriers, as noted above, already are assessed a regulatory fee in the Public Mobile/Cellular Radio Services category. Thus, requiring resellers to pay regulatory fees could lead such carriers to be assessed two fees for one service.<sup>15</sup>

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<sup>14</sup> GTE Reply Comments, MD Docket No. 94-19, filed April 18, 1994, at 10.

<sup>15</sup> *Id.* GTE notes, however, that if the Commission adopts the clarification suggested in the previous section of these Comments, this problem will cease to exist.

GTE argued in the earlier proceeding that allowing resellers to escape a direct regulatory fee assessment would not allow such entities to escape the regulatory fee burden. GTE stated that:

in the case of interexchange carriers, by requiring facilities-based carriers to pay regulatory fees for all facilities -- including those used by resellers -- regulatory fees will be assessed and collected for all facilities used in providing interexchange services.<sup>16</sup>

GTE noted that even though resellers would not be required to directly pay regulatory fees, they would still share in the regulatory fee burden. GTE argued that entities paying regulatory fees would likely pass those fees through to their customers -- including resellers -- in the form of higher rates for the underlying services.<sup>17</sup>

GTE continues to believe that assessing regulatory fees on resellers of common carrier services will lead to double counting of facilities or double assessments on service providers and is not necessary to ensure that resellers share in the regulatory fee burden. Accordingly, GTE requests that the Commission not require resellers to directly pay regulatory fees.

### III. CONCLUSION

GTE asks the Commission to clarify or amend its proposed fee schedule and rules for fiscal year 1995 in order to ensure a fair and equitable assessment of the regulatory fee burden. GTE asks the Commission to remove any

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<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.*



confusion that may have been created by footnotes 9 and 17 of the NPRM by stating clearly whether it intends existing carriers either classified as CMRS or transitioning to CMRS to pay regulatory fees. GTE urges the Commission in this regard to impose a similar regulatory fee burden on present and future CMRS providers. GTE also asks the Commission to clarify that an entity is only required to pay one regulatory fee amount for each service it provides. The fee assessed on such providers should be the fee category encompassing the principal service provided by the entity. Finally, GTE asks the Commission to amend its proposed rules to exclude resellers from directly having to pay regulatory fees. GTE believes that assessing regulatory fees on resellers will lead to double counting of facilities or double assessments on service providers and is not necessary to ensure that resellers share in the fee burden.

Respectfully submitted,

GTE Service Corporation and its affiliated  
domestic telephone, equipment and  
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